

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMMY A. DEIBER and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, Ill.

*Docket No. 97-21; Submitted on the Record;
Issued September 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of her federal employment on October 1, 1995.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof in this case.

In the present case, on November 16, 1995 appellant, a distribution clerk, filed a claim alleging that, on October 1, 1995 while bent over to lift heavy tubs of flats, she developed pain in the left side of her back and that repetitive movements of sorting mail now aggravated the back. Appellant sought treatment from Donald B. Backstrom, a chiropractic physician. In reports December 14, 1995 and March 5, 1996, Dr. Backstrom diagnosed thoracic intervertebral disc disorder, thoracic outlet syndrome, myofibrositis and cumulative trauma disorder, and he indicated that appellant could continue with work activities. The Office of Workers' Compensation Programs denied appellant's claim by decision dated April 22, 1996 on the grounds that fact of injury was not established. In an accompanying memorandum to the director, the claims examiner explained that Dr. Backstrom had not diagnosed a subluxation of the spine, based upon x-ray evidence and, therefore, he was not a "physician" under the Federal Employees' Compensation Act. As Dr. Backstrom's reports were not considered medical evidence, appellant had not submitted medical evidence necessary to establish that she had sustained an injury in the performance of her federal employment. The Office did find in the decision dated April 22, 1996 that the evidence of record supported that the claimed events, incidents or exposure occurred at the times, places and in the manner alleged, however, a medical condition resulting from the accepted trauma or exposure was not supported by the medical evidence of record.

An employee seeking benefits under the Act¹ has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.²

In the present case, appellant has alleged that she sustained a back injury causally related to factors of her federal employment. As part of appellant’s burden of proof, she must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her federal employment.³ The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two.⁴

In the present case, the only medical reports appellant has submitted to the record are from her chiropractor, Dr. Backstrom. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”⁵ Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by an x-ray.

The Board finds that the Office specifically advised appellant by letter dated February 21, 1996, that pursuant to the Act, the term “physician” includes chiropractors only to the extent that their treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray. As Dr. Backstrom’s reports dated December 14, 1995 and March 5, 1996, did not indicate that x-rays had been taken of appellant’s spine and that a subluxation had been diagnosed therefrom, the Office properly concluded that Dr. Backstrom was not a “physician” pursuant to the Act. As there is no medical evidence of record, the Office properly determined that appellant had not established that she sustained an injury in the performance of duty on October 1, 1995.

¹ 5 U.S.C. § 8101 *et. seq.*

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁴ *William Nimitz*, 30 ECAB 567 (1979).

⁵ 5 U.S.C. § 8101(2).

The decision of the Office of Workers' Compensation Programs dated April 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 1, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member